



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

IN THE LAW AND EQUITY COURT OF THE CITY OF
RICHMOND.

CHARLES T. NORMAN *v.* CHRISTO MANUFACTURING COMPANY,
INC.

December 23, 1911.

1. Stock and Stockholders—Transfer—Lien of Corporation.—Where a certificate of stock stating on its face that it is fully paid up and non-assessable, transferrable only on the books of the corporation, etc., was assigned in due form, the assignee having no notice that it was not fully paid, and the corporation refused to transfer the stock on its books on the ground that it had a lien for the unpaid subscription money, the corporation could assert its lien against the assignee under these circumstances, and refuse to transfer the stock.

2. Same—Statutes—Estoppel.—Under the statutes of Virginia, § 1105e, cl. 57, 58, 59, Code 1904, the corporation has a lien on its stock for the unpaid subscription money, and can not be compelled to transfer the stock on its books until the money is paid, although it may be estopped to assert a personal liability against the assignee of the stock.

3. Same—Notice of Lien of Corporation.—The lien of the corporation being thus created by statute, constructive notice of its existence is given to the world, and the effect of clause 59 of § 1105e is to authorize an assignment of the certificate subject to the right of the corporation under clause 57 to decline to transfer the certificate, and so place a legal title in the assignee until all the money which had become payable under the subscription agreement had been paid.

Petition for Mandamus. On Demurrer of Respondent to Petition and Demurrer of Relator to Answer.

Memorandum by the court. Beverley T. Crump, Judge.

I.

The demurrer of the respondent to the petition of the relator is overruled.

II.

The demurrer by the relator to the answer of the respondent raises a question of some importance. The question may be stated thus: W. A. Loving held a certificate for twenty shares of stock in the Christo Manufacturing Company regularly issued in the usual form. Loving assigned this stock to the relator by filling out the usual blanks in, and by signing, the usual printed form of assignment on the back of the certificate. The certificate states on its face that it is issued for twenty shares

"fully paid up and non-assessable, transferable only on the books of the corporation in person, or by attorney, on surrender of this certificate." The relator received this certificate in good faith, supposing it to have been fully paid, and without any claim on the part of the corporation against his assignor for anything due on his subscription to this stock. The corporation refused to transfer the stock on its books and issue a new certificate to the relator, on the ground that the subscription money due by Loving had never been paid, and the corporation could not be compelled to transfer the stock until the subscription money had been paid.

The question is, Can a corporation assert its lien for unpaid subscription money against the assignee on a certificate of shares under these circumstances, and refuse to transfer the stock?

It is argued on behalf of the relator that he having acted in good faith without notice that the stock had not been paid for, and that the corporation having put out this certificate with the representation on its face that it was fully paid and non-assessable, the corporation is stopped from asserting any claim against him as assignee, or any lien against the stock for unpaid subscription money. For this position, counsel for the relator referred to 1 Cook on Corporations, § 50; 10 Cyc. 483; *Rood v. Wharton*, 67 Fed. 434.

These authorities deal with the question as to the personal liability of an assignee, and they hold what seems to be generally established as law, that, under circumstances such as exist here, an assignee is under no personal liability to pay for either past due or future assessments upon the stock, inasmuch as the certificate had been issued with the representation on its face that it was fully paid and non-assessable. This principle rests upon waiver and is an exception to the general rule which existed, both at common law and in many states of the Union, by statute, that an assignee is liable for future calls on the stock. *Gold v. Paynter*, 101 Va. 714, 720. The question, however, presented to the Court in this case is not with reference to the personal liability of the assignee, but bears solely upon the right of the corporation to the existence and enforcement of a lien on the res or the shares of stock themselves as specific personal property.

The question just mentioned is to be solved very largely by statutes of Virginia bearing upon it. In § 1105e, Clause 57 of the Code, it is enacted that the person in whose name shares of stock stand on the books of the corporation shall be deemed to be the owner thereof as regards the corporation. In the same section, Clause 28, it is provided that the corporation may proceed to sell shares of stock upon which the installments or

calls, or any balance of them, remain unpaid, and the effect of this clause is to give the corporation a lien upon the stock itself for unpaid subscription money. In the same section, Clause 57, it is provided that no stock shall be assigned on the books without consent of the corporation until all the money which has become payable thereon, under the subscription agreement, has been paid, and further, that if an assignment of the stock is carried out by a transfer on the books, the assignor is no longer liable, but the assignee does become liable for any installments of the subscription money which may have accrued, or which may thereafter accrue. In Clause 59 of the same section, which bears directly upon the question at issue, it is provided that if any person sells his stock and delivers the stock to the purchaser with a power-of-attorney authorizing the transfer on the books of the corporation, the title of the transferror shall vest in the transferee subject, however, to the provisions of Clauses 57 and 58 just referred to.

These statutory provisions, viewed in the light of the principles of law as laid down by the leading authorities, are conclusive of the case.

As already stated, there is no question now before the Court relative to the personal liability of the assignee of the stock, as well as that of the assignor. The only question now to be decided is as to the right of the corporation to decline to transfer the stock because of its right to a lien upon the stock for the unpaid subscription money.

In 2 Cook on Corporations (4th Ed.) § 530, the author states: "When a corporation has a lien upon the stock of those of its stockholders who are indebted to it, it may refuse to allow a transfer of the stock until the debt is paid, or secured to its satisfaction. And the corporation may insist upon its lien and hold the stock even against a bona fide purchaser, inasmuch as purchasers of stock are bound to take notice of legal liens." In § 531, Mr. Cook treats of the circumstances under which a corporation is held to have waived its lien, but there are no circumstances in this case which form a proper basis for holding that the statutory lien has been waived. The same principles as to the right to the statutory lien, and as to its enforcement, are enunciated in 1 Machen's Modern Law of Corporations, § 956. This author there says: "If the lien be created by statute, even a bona fide purchaser of the shares claiming under a transfer endorsed on the share-certificate would take subject to the lien, for he has constructive notice."

The Supreme Court of the United States has held this principle to be generally applicable. See *Hammond v. Hastings*, 134 U. S. 401.

It is true that this seems to be giving effect to a secret lien, but the reason for the law is that the lien having been created by statute, constructive notice of its existence is given to the world. The principles laid down in the authorities above cited have been recognized in Virginia in the construction of our former statute upon this subject. See *Petersburg Savings, etc., Insurance Co. v. Lunsden*, 75 Va. 327; *Bohmer v. Bank*, 77 Va. 445.

The effect of Clause 59 of § 1105e of the Code is to authorize an assignment of the certificate for stock subject to the right of the corporation under Clause 57 to decline to transfer the certificate, and so place a legal title in the assignee until all the money which had become payable under the subscription agreement had been paid. As, by the demurrer to the answer, it is admitted that, at the time of the assignment, the subscription money had not been paid, the right of the corporation to refuse to make the transfer of the certificate on its books, and to issue a new certificate, is clear, and, therefore, a mandamus will not lie to compel the corporation to make the transfer.

In considering these questions, I have been aided by the Notes in *Williams Corporation Laws of Virginia*, on pages 93, 94, 128, 129 and 130.

No question has been raised as to the propriety of the remedy by mandamus in this case.

The Court will overrule the demurrer to the answer.

At the request of counsel, I have re-examined the question involved here, and I am constrained to the conclusion that my former ruling is correct.

The additional authorities cited do not deal with a case of a lien created by statute.

In the *Westminster Nat. Bank v. New England Elec. Works*, 73 N. H. 465, the question at issue was as to the validity or legality of the issue of the stock.

In *Anglo Cal. Bank v. Grangers' Bank*, 63 Cal. 359, the lien asserted was created by a by-law not by statute. See 2 *Cook on Corpsns.*, pp. 1421, 1422.

I have also examined 4 *Thompson on Corpsns.*, 4001, 4006, 4385.

Under the statutes of Virginia, the corporation has a lien on the stock for the unpaid subscription money, and cannot be compelled to transfer the stock on its books until the money is paid, although it may be estopped to assert a personal liability against the assignee of the stock.